

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.386 OF 2020

1. Ramdas s/o Narayan Gavhane,
Age 29 years, Occupation Agri.,
R/o Malegaon Tq. Kaij Dist.Beed.
2. Govind s/o Lala Rode,
Age 42 years, Occupation Agri.,
R/o Malegaon Tq. Kaij Dist.Beed. **...Appellants.**
(Original Accused)

VERSUS

1. The State of Maharashtra,
Through Police Station Officer,
Yusuf Wadgaon Police Station
Tq. Kaij Dist.Beed.
2. Abhijit s/o Balu Bachute,
Age 16 years, Occupation Education,
R/o Gotegaon Tq.Kaij Dist.Beed. **...Respondents.**
(Resp.No.2 Original Informant)

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Advocate for Appellants : Mr. R. D. Thorat.
Advocate for Respondent No.2 : Mr. R. L. Kute.
APP for Respondent No.1-State : Mr. R. B. Bagul.
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 17-08-2020.

JUDGMENT :

1. Heard both sides.
2. Since arguable points are made, the appeal is admitted.

3. By consent the appeal is taken up for final disposal.

4. Present appeal has been filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to challenge the Judgment and order passed by learned Additional Sessions Judge, Ambajogai on 02-07-2020, in Criminal Bail Application No.217 of 2020. The appellants are apprehending their arrest in connection with Crime No.125 of 2020, registered on 13-06-2020, with Yusuf Wadgaon Police Station Tq. Kaij Dist.Beed, for the offences punishable under Section 324, 323, 506 read with 34 of the Indian Penal Code and Section 3(1) (r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

5. Heard learned Advocate Mr. R. D. Thorat for the appellants, learned Additional Public Prosecutor Mr. R. B. Bagul for respondent No.1-State, and learned Advocate Mr. R. L. Kute for respondent No.2- original informant.

6. It has been vehemently submitted on behalf of the appellants that, perusal of the entire First Information Report would clearly show that, there are no recitals attributing offence under Atrocities Act. It also does not disclose that, merely because the informant is

a member of scheduled castes, he was targeted, and offence has been committed against him. In fact, it gives an impression that the incident had occurred at a spur of moment while overtaking the appellant No.1, the motorcycle of the informant dashed to the motorcycle of the appellant No.1 and, thereafter, he had fell down. There is no whisper about any previous enmity, therefore it cannot be said to be a premeditated act. The learned Additional Sessions Judge has granted anticipatory bail to applicant No.1 before the said Court i.e. co-accused Angad Sitaram Gavhane, however rejected the application filed by the present appellants on the ground that the offence that has been committed by them is serious. In fact, the allegation against appellant No.2, though his surname has been mentioned wrongly as 'Gore' instead of 'Rode', would show that he had assaulted the informant by fist blows. As regards appellant No.1 also it is stated that, he had assaulted the informant by iron rod and the situs chosen is foot. The learned Additional Sessions Judge/ Special Court has also observed that, provisions of Atrocities Act are not attracted, however only under the pretext that the role of the present appellants is serious, it has been rejected, which is an illegal order and deserves to be set aside. The learned advocate for the appellants, therefore, prayed for anticipatory bail by allowing the

appeal.

7. Per contra, the learned Additional Public Prosecutor as well as learned advocate appearing for the respondent No.2 vehemently submitted that, the weapon that has been used in the commission of the crime i.e. iron rod, is required to be recovered at the instance of appellant No.1, who had used it. The learned Additional Sessions Judge/ Special Court has taken a correct view that the role of the present appellants is serious. Though the applicant No.1 before Trial Court had fell down from his motorcycle yet he had called the present appellants No.1 and 2, and they had come with preparation to assault the informant, therefore the view taken by the learned Additional Sessions Judge/ Special Court is correct.

8. It appears that, the Angad Gavhane has also lodged report against present informant–respondent No.2, however it is subsequently filed i.e. on 15-06-2020 vide Crime No.126 of 2020, for the offences punishable under Section 307, 323, 504, 506 read with 34 of the Indian Penal Code. Since it is a subsequent act by Angad Gavhane, it need not be taken note of in the present matter.

9. At the outset, it is to be noted that, the informant is 16 year

old boy. It is stated that, he stays at Pune for education, however due to lockdown situation he had come to his native place to stay along with his parents. He claims that, he knows Angad Gavhane. He had gone along with his cousin brothers at about 5.30 p.m. on 12-06-2020 to see the flood like situation to the river which is nearby his village and, thereafter, it is stated that he was returning on motorcycle. The First Information Report gives a clear indication that the informant was driving the motorcycle. First of all the question arises that, since the informant is 16 a year old boy, how he can drive the motorcycle. He is not entitled to get driving licence. The second point which has to be considered is that, in lockdown situation when Government is appealing to public at large that they should remain in house, yet the informant with his cousin brothers had gone to see the flood like situation to the river. This gives indication about the attitude and behaviour of the informant. No doubt this Court is dealing with a *prima facie* situation still the facts which have gone wrong for the informant will have to be considered. The third aspect is that, the 16 year old boy was driving the motorcycle having two pillion riders, and then he says that, when he was overtaking Angad Gavhane, who was talking on mobile by sitting on his motorcycle, the motorcycle driven by the informant

dashed to the motorcycle of Angad Gavhane, as a result of which Angad fell down. Informant stopped his motorcycle at a distance but then his cousin brothers are stated to have fled from the spot. Informant says that, he went near Angad to see whether he has received any injury and at that time Angad took out his phone and connected it to someone, asked informant that whose son he is, and then asked the informant to stay there. According to the informant the present appellants came after a while in a four wheeler and, thereafter, the appellant No.1 assaulted informant's foot by iron rod. Appellant No.2 assaulted him by fist blows. He thereafter says that, informant was brought to Malegaon on the motorcycle of Angad Gavhane and then he was again assaulted in Bhavani Chowk. Angad Gavhane threatened him to hang, and then he says that he became unconscious. He regained his consciousness when he was admitted to Ambajogai Hospital.

10. There are so many unanswered facts involved in the First Information Report, yet even if we take the contents of the First Information Report as it is, there is absolutely no whisper about the caste of the informant. On the contrary, though the informant claims that, he knew Angad but Angad appears to have been not

knowing the informant otherwise he would not have asked informant about his identity (whose son he is). It appears that, only simple hurt has been caused to the informant since only 324 of Indian Penal Code has been invoked. At this stage, the police papers are not made available showing specifically the medical certificate of the informant. For the simple hurt, the recovery of weapon cannot be taken as hurdle for entertaining an anticipatory bail application. As aforesaid, the offence under Section 3 (1) (r) of Atrocities Act do not get attracted *prima facie* and there is no question of bar under Section 18-A of the Atrocities Act. To this extent the learned Additional Sessions Judge/ Special Court has taken a correct view. However, thereafter, as regards the present appellants are concerned, it appears that unnecessarily a cryptic and indigestible reason has been given while rejecting their bail application. The informant had tried to give more role to Angad since the fact that unless he would not have called the present applicants, they would not have to come that place, and then the informant also say that, he was taken on the motorcycle of Angad Gavhane to Malegaon and, thereafter, in Bhavani Chowk also he was assaulted. He is silent on the point as who had assaulted by which means at Bhavani Chowk, but then Angad had given him threat to hang. In spite of the fact

that informant had tried to give more role to Angad, the Additional Sessions Judge/ Special Court has granted anticipatory bail to Angad. The learned Additional Sessions Judge erred in rejecting the application by the present appellants. It appears that, the learned Additional Sessions Judge/ Special Court has not taken note of the fact that the present appellant No.2, who was applicant No.3 before the Trial Court, has not used any weapon, still it is stated that, role of both the applicants i.e. applicants No.2 and 3 is serious, and only on that ground it appears that the application by the present appellants came to be rejected. The learned Additional Sessions Judge/ Special Court has taken a wrong approach which has to be corrected in the present appeal. Hence, following order.

ORDER

- 1) Appeal is hereby allowed.
- 2) The order passed by the learned Additional Sessions Judge/ Special Court, Ambajogai on 02-07-2020, thereby rejecting Criminal Bail Application No.217 of 2020 as against the present appellants, stands set aside. The said application stands allowed in respect of present appellants also.
- 3) In the event of arrest of the present appellants, in connection with Crime No.125 of 2020, registered on 13-

06-2020, with Yusuf Wadgaon Police Station Tq. Kaij Dist. Beed, for the offences punishable under Section 324, 323, 506 read with 34 of the Indian Penal Code and Section 3 (1) (r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, they be released on P.R. and S.B. of Rs.15,000/- each (in words rupees fifteen thousand only).

4) The appellants shall attend Yusuf Wadgaon Police Station Tq. Kaij on every Monday and Thursday between 10.00 a.m. to 02.00 p.m. till filing of charge-sheet.

5) The appellants shall not indulge in any criminal activity nor they shall tamper with the evidence of the prosecution.

6) Bail before Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.